



National Governors' Association
Center for Best Practices

Natural Resources
Policy Studies Division

State Considerations And Strategies for Implementing the Chemical Accidental Release Prevention Program

By Allyn F. Finegold

Since their initial meeting in 1908 to discuss interstate water problems, the Governors have worked through the National Governors' Association to deal collectively with issues of public policy and governance. The association's ongoing mission is to support the work of the Governors by providing a bipartisan forum to help shape and implement national policy and to solve state problems.

The members of the National Governors' Association (NGA) are the Governors of the fifty states, the territories of American Samoa, Guam, and the Virgin Islands, and the commonwealths of the Northern Mariana Islands and Puerto Rico. The association has a nine-member Executive Committee and three standing committees—on Economic Development and Commerce, Human Resources, and Natural Resources. Through NGA's committees, the Governors examine and develop policy and address key state and national issues. Special task forces often are created to focus gubernatorial attention on federal legislation or on state-level issues.

The association works closely with the administration and Congress on state-federal policy issues through its offices in the Hall of the States in Washington, D.C. The association serves as a vehicle for sharing knowledge of innovative programs among the states and provides technical assistance and consultant services to Governors on a wide range of management and policy issues.

The Center for Best Practices is a vehicle for sharing knowledge about innovative state activities, exploring the impact of federal initiatives on state government, and providing technical assistance to states. The center works in a number of policy fields, including agriculture and rural development, economic development, education, energy and environment, health, social services, technology, trade, transportation, and workforce development.

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Foreword

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The National Governors' Association (NGA) has been actively involved in right-to-know and emergency management issues for many years. Since the early 1980s, NGA policies have called for comprehensive emergency management and chemical safety as well as supported community and worker right-to-know programs. Following the enactment of the Emergency Planning and Community Right-to-Know Act under Title III of the Superfund Amendments and Reauthorization Act of 1986, NGA provided guidance to Governors' offices and state agencies on the law's implementation. The NGA Center for Best Practices keeps state officials informed of Title III issues, challenges, and opportunities and provides guidance on emergency management. In 1993 NGA published *A Governor's Guide to Environmental Risk Response*, and in fall 1997 the Center will publish an updated edition of *A Governor's Guide to Emergency Management*.

This is the eighth NGA annual report on chemical emergency preparedness and prevention programs. Previous reports have detailed state approaches to administering state chemical emergency management activities, creating state fee systems to fund these activities, and educating the public about chemical risks. This report focuses on state implementation issues and strategies related to the Chemical Accidental Release Prevention Program established under Section 112(r) of the Clean Air Act of 1990. A grant from the U.S. Environmental Protection Agency's Office of Solid Waste and Emergency Response to the NGA Center for Best Practices also funds technical exchange workshops and national conferences on state chemical emergency preparedness and prevention activities.

The report was written by Allyn F. Finegold and edited by Karen Glass. The author wants to thank the many state officials who provided information for this report.

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Executive Summary

State chemical emergency preparedness programs have been evolving since the Emergency Planning and Community Right-to-Know Act of 1986 called on states to develop plans for responding to a chemical emergency and educate the public about chemical risks. Under Section 112(r) of the Clean Air Act of 1990, states are asked to develop a program to prevent accidental releases of chemicals that pose the greatest threat to human health and the environment and communicate chemical information to the public. The most critical issue facing states is to determine whether the accident prevention program will be implemented by state agencies or whether they will leave full or partial responsibility for the program to the federal government. States must make this decision before the program takes effect on June 21, 1999.

During the next year, states will need to answer three questions regarding the Section 112(r) program.

- Should the state assume responsibility for carrying out the activities under Section 112(r)?
- If the state assumes responsibility for these activities, how will a state-administered Section 112(r) program be funded and structured?
- What mechanisms will the state use to communicate chemical information to the public?

Challenges for States

States have cited a lack of federal and state funding and a fear of legal liability as the greatest challenges to administering Section 112(r) at the state level. However, despite these challenges, a preliminary analysis of state implementation strategies shows that roughly half of the states plan to assume responsibility for some components of Section 112(r), leaving

the remaining responsibilities to the federal government.

Federal Requirements

Section 112(r) includes requirements for both industry and government. The program requires facilities to make information on potential chemical risks available in risk management plans and government to audit the facilities' plans. Although industry must assume the primary responsibilities of Section 112(r), federal, state, and local governments need to craft an accident prevention program that operates efficiently.

Implementation Issues for States

Among the operational tasks facing states that opt to develop a state-administered program is choosing a method to seek delegated authority from the federal government to implement Section 112(r). States can incorporate the federal rule by reference, substitute the federal rule for state accident prevention laws, or develop state regulations that conform to the federal rule. Another task is to determine the

roles of state agencies in meeting program requirements. States need to examine the resources and authorities of state agencies to determine which one will administer the Section 112(r) program.

Funding Approaches

States that decide to assume responsibility for Section 112(r) will also face the challenge of funding. States are exploring both federal and state funding mechanisms to cover the costs of an accident prevention program. Delaware, Louisiana, Nevada, and New Jersey operate funding programs for chemical accident prevention. They can serve as models for other states.

Public Access to Chemical Information

A major component of Section 112(r) focuses on improving public accessibility and understanding of chemical information. The composition and experience of local emergency planning committees (LEPCs) make them well suited to help educate communities about potential chemical risks. LEPC members typically have strong community ties and in-depth knowledge of local emergency response plans. However, their funding and training limitations cannot be ignored. States have begun to address LEPC concerns about their involvement in Section 112(r) implementation by informing them of program requirements and allocating funds for training and technical support. In addition, industry is beginning to work with LEPCs and state agencies to help prepare them for communicating and interpreting the information in risk management plans.

Two Strategies for State 112(r) Implementation

Each state will develop an implementation strategy that addresses the operational and

funding issues of Section 112(r) and maximizes the expertise and resources of state agencies. Although most states have not yet chosen a definitive path for Section 112(r) implementation, two strategies are reflected in the efforts of Florida and Michigan.

Florida's proposed implementation model calls for seeking full delegation for Section 112(r). Its strategy includes designating a single lead agency for the program but tapping the expertise and resources of other state agencies. The state plans to address the financial challenges by charging fees to cover the program's operating costs. Program operations will begin one year before the facilities must submit risk management plans so the state can conduct education and training activities and increase public and industry awareness of the program.

Michigan has developed a different strategy to implement Section 112(r) that focuses only on facilities that are regulated under the existing federal air permitting program. Using this approach, the state will integrate the activities required under the two programs and use existing resources to cover the increased operating costs. The air quality division, the administering agency for the federal air permitting program, will be the agency responsible for carrying out 112(r) program activities.

These proposed state implementation strategies suggest that the Chemical Accidental Release Prevention Program is not a one-size-fits-all program. States will need considerable flexibility from the federal government so they can choose an approach to funding and administering the program that maximizes federal, state, and local resources and expertise.

Introduction

Approximately 5,700 tons of anhydrous ammonia entered the atmosphere after an explosion at Terra International, Inc.'s nitrogen fertilizer facility in Port Neal, Iowa, on December 13, 1994. Three thousand people had to evacuate their homes following a chemical release from a railroad tank car at the Gaylord Chemical Corporation in Bogalusa, Louisiana, in October 1995.

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In the wake of these and other incidents that have occurred since the Emergency Planning and Community Right-to-Know Act was enacted in 1986, the federal government recognized that the law did not include sufficient measures for preventing chemical accidents. Congress responded by creating the Chemical Accidental Release Prevention Program under Section 112(r) of the Clean Air Act of 1990.

The Section 112(r) program seeks to prevent accidents involving chemicals that pose the greatest risk to public health and the environment. Its second objective is to provide the public with information beyond what is required under the 1986 law about the hazards at chemical facilities located in communities. States are now deciding whether they will administer this program at the state level by seeking delegated authority from the U.S. Environmental Protection Agency or leave its implementation in the state to the federal government.

This report describes the requirements of the accident prevention program for both facilities and governments. In addition, it examines

operational and financial considerations for implementing a state Section 112(r) program. The report also addresses issues related to communicating information on chemical risks to the public. Two case studies illustrate different approaches to administering an accident prevention program in the state. A second report, *Emergency Planning and Community Right-to-Know Act: State Profiles, 1997*, provides updated profiles of state emergency response commissions.

Information for this report was collected from March 1997 through June 1997 from state officials charged with developing a state strategy for implementing Section 112(r). In addition, the report incorporates findings from the NGA State Emergency Response Commission Conference held in June 1997 that focused primarily on state implementation issues related to the Chemical Accidental Release Prevention Program. Representatives from thirty-seven states, federal and local government officials, and industry representatives attended the conference.

Understanding the Requirements for Industry and Government Under Section 112(r)

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The Chemical Accidental Release Prevention Program established under Section 112(r) of the Clean Air Act of 1990 requires industry and federal, state, and local governments to prevent and plan for accidental releases of hazardous chemicals. The U.S. Environmental Protection Agency (EPA) promulgated the final rule for risk management planning in June 1996, and government and industry are exploring how they can:

- prevent accidental releases of toxic chemicals and other hazardous substances;
- minimize the consequences of a release by encouraging preventive measures for chemicals that pose the greatest risk; and
- provide information to the public about the hazards at a chemical facility and the potential consequences of a major chemical incident.

Section 112(r) complements the requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), which addresses chemical emergency preparedness and prevention. EPCRA created state emergency response commissions and local emergency planning committees to develop plans for responding to chemical emergencies. These plans are based on information that facilities must provide under the law on the hazardous chemicals they handle. However, EPCRA did not require that facilities work with state and local governments to establish accident prevention programs.

Requirements for Industry

Section 112(r) requires facilities to provide information to state and local governments and the public on potential chemical hazards.

EPA's final rule identifies a list of chemicals and threshold quantities. It requires facilities that "produce, handle, process, distribute, store, or use" any of these chemicals at the threshold levels to submit a risk management plan (RMP) to designated government agencies by June 21, 1999. The RMP must include a hazard analysis of the facility, an assessment of the risks of chemicals on site, and a description of activities that the facility is performing or will undertake to reduce the likelihood of a chemical release at the site.

The final rule also established additional requirements for facilities, depending on whether they fall into one of three categories. Releases from facilities in the first category would have only minimal effects on the surrounding community and the environment.

These facilities must prepare a five-year history of accidental releases and an analysis of alternative scenarios and of a potential "worst-case" scenario for a release. Accidental releases from facilities in the second or third categories would pose higher risks to human health and the environment. These facilities must develop an accident prevention program, an emergency response plan, and a management system for implementing the accident prevention program. EPA estimates that approximately 66,000 facilities across the United States fall into one of the three categories.

Requirements for Government

Although industry assumes most of the responsibility for preventing and mitigating chemical accidents, all levels of government

and the public play important roles in chemical emergency preparedness and prevention programs. The state must choose a government agency to review facilities' risk management plans; perform onsite inspections and periodic audits at facilities; ensure that facilities revise their plans, if necessary; and enforce the program. If a state chooses to implement the Section 112(r) program, it must also seek formal delegation from EPA to administer its own program. In addition, EPA, state and local government agencies, and local emergency planning committees have access to summaries of facilities' risk management plans and are responsible for making these summaries available to the public and other interested parties.

Challenges and Opportunities for States In Implementing Section 112(r)

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States must decide whether to assume responsibility for implementing and enforcing the requirements of Section 112(r), or whether to have full or partial responsibility for the program rest with EPA. They identify limited resources and liability concerns as the most formidable challenges in Section 112(r) implementation. However, states also recognize the opportunities of implementing the program at the state level. State implementation enables states to craft programs that meet the specific needs of state and local governments and local industry, incorporate Section 112(r) activities with other chemical preparedness and prevention activities, increase their knowledge of chemical risks, and build on established state-local emergency response relationships.

Challenges

States choosing to implement and enforce the Section 112(r) program face significant challenges, including the following.

- **Lack of federal and state resources.** Most states that will not seek delegation cite a lack of federal resources for administering the program as the major reason. Limited funding, staff, and training at the state level further limits states' ability to assume Section 112(r) responsibilities.
- **Fear of liability.** Several states have raised the issue of the legal liability associated with auditing facility risk management plans under a state-administered and state-enforced program. Although EPA has not set a minimum number or percentage of risk management plans that states are required to audit, states will not have the resources to audit all of the facilities subject to Section 112(r). State officials have expressed concern that they will be vulnerable to lawsuits if an accident occurs at a

facility where the state has not conducted an audit. States will be forced to weigh the costs of auditing a greater number of facilities against the potential for being held liable for a chemical accident under Section 112(r).

Two states have chosen not to undertake primary responsibility for Section 112(r) but have indicated that they will still play a limited role in administering the program. The Oklahoma Department of Environmental Quality will work with local emergency planning committees to assist them in understanding and communicating the information in risk management plans. The Wisconsin Department of Natural Resources will assume responsibility only for determining whether risk management plans submitted by facilities that also are subject to federal air permitting regulations fulfill the Section 112(r) requirements. The state will rely on EPA to review the content of all risk management plans and make this information available to local communities and the public.

Opportunities

Designating a state agency, rather than EPA, to implement Section 112(r) creates several opportunities for states, including the following.

- **Flexibility to design a state program.** A state implementing its own program can tailor that program to suit its available resources and the types of facilities in the state that are subject to statutory and regulatory requirements. For example, a state program can direct its resources to help small businesses comply with Section 112(r) or focus outreach and compliance efforts on those facilities that are engaged in activities posing the greatest risk to public health and the environment.
- **Freedom to integrate related activities.** States already are working closely with industry and local emergency planning committees to fulfill the requirements of EPCRA and can incorporate Section 112(r) activities into current state activities. For example, facility inspections mandated under Section 112(r) can be conducted as part of current compliance and enforcement procedures carried out by the state.
- **Increased knowledge of chemical risks.** A state-operated program will enhance the state's ability to prevent and plan for chemical accidents. It will also enable the state to collect additional information about the chemicals and processes at facilities located in the state, making LEPCs and the public

more knowledgeable about the chemical risks in communities.

- **Reliance on established state and local emergency response systems.** State agencies' relationship with and understanding of their local facilities and LEPCs are better than those of EPA. A state has the most knowledge about the nature of the facilities, the possible environmental risks, and the strengths and weaknesses of local emergency planning committees.

Outstanding Issues

Most states will not decide whether to assume the responsibility for implementing and enforcing the requirements of Section 112(r) until EPA resolves several outstanding issues. A common concern among states is that EPA has not described the accident prevention program that it would administer in a state that chooses not to implement the program. Until EPA outlines the activities it would undertake in concert with state agencies and facilities, states cannot weigh all of the advantages and disadvantages of administering a state program. In addition, states and EPA are developing guidance that outlines the mechanisms through which states can seek delegation of authority for the program, delineates federal and state agency responsibilities, and determines training needs for state and local agency personnel. The outcome of these discussions has major import for state decisions to implement Section 112(r).

Implementing the Section 112(r) Program

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Once a state has decided to assume responsibility for Section 112(r), it must consider two issues that are critical to the development of a successful state program: applying for delegated authority to implement Section 112(r) and designating an implementing agency. States will choose the most effective approach for formally seeking federal delegation of program responsibilities. They will either amend existing legislation that addresses chemical accident prevention to codify new requirements of the Section 112(r) program or craft new state legislation that addresses chemical accident prevention. States also need to examine the structure and activities of state agencies to determine which agency will carry out the new accident prevention activities. In addition, they need to identify which agency has staff and other resources dedicated to chemical emergency planning that can be used to implement the program.

Applying for Delegated Authority

States that decide to administer all or some of the Section 112(r) requirements must obtain approval from EPA. Section 112(l) of the Clean Air Act established the following minimum requirements for states to qualify for full delegation. A state must:

- demonstrate that it has the authority and resources to implement the regulations;
- develop procedures for registering facilities, receiving and reviewing risk management plans, making risk management plans available to the public, and providing technical assistance to regulated facilities and small businesses;
- demonstrate enforcement authority and a strategy for auditing risk management plans; and
- establish state mechanisms for coordinating with federal and state agencies, the state emergency response commission, and local emergency planning committees.

Under Section 112(l), states can seek delegation of Section 112(r) in three ways.

- **Incorporate the federal rule by reference.** States can choose to incorporate the federal rule by reference in a state statute. However, they may still be required to submit a separate implementation document to EPA that defines their strategy for ensuring compliance with the federal regulation.
- **Substitute the federal rule for state accident prevention laws.** Under Section 112(l) of the Clean Air Act Amendments, states with an existing risk management law that meets the minimum requirements of the federal Section 112(r) program can substitute the federal rule for the state's accident prevention laws. However, this mechanism only grants delegation to the state's air permitting agency and does not allow the state to transfer program responsibility to another state agency.

- **Develop state regulations that conform to the federal rule.** States can develop regulations that meet the requirements of the federal rule but also fulfill specific state needs. Several states have crafted legislation that establishes a risk management program or amends existing accident prevention laws. For example, California Governor Pete Wilson signed legislation in September 1996 that amended the state's risk management and prevention program to fulfill the federal rule's requirements. The legislation designates the Governor's office of emergency services as the implementing agency and goes beyond the requirements of the federal program to include additional chemical substances, grant greater authority to local agencies, and create a role for the public in reviewing risk management plans.

Designating an Implementing Agency

Under the federal rule, states that decide to implement Section 112(r) must designate a state agency to administer the program. States may also designate more than one agency to perform this task. The implementing agency is responsible for providing technical assistance, reviewing facility records and risk management plans, performing onsite inspections and audits, and carrying out enforcement activities. It is likely that the agency assigned these responsibilities will vary among states.

The Florida Emergency Response Commission formed a Section 112(r) workgroup to study implementation approaches. The workgroup identified the following questions that state officials may want to consider when designating an agency to administer the program.

- Does the state agency have the legislative, enforcement, and budgetary authority to implement the program?
- What are potential funding sources for administering Section 112(r) in the state?
- What resources are available to perform the initial program activities and sustain program operations?
- How many and what types of facilities in the state will be covered by Section 112(r)?

In some states, facilities subject to Section 112(r) may also be required to submit information to the state's air permitting agency under Title V of the Clean Air Act. Some states will delegate the responsibility for implementing Section 112(r) for these facilities to the state air agency and make another state agency responsible for the remaining facilities that must submit information under Section 112(r).

Single-Agency Approach

Designating a single state agency to carry out the state's Section 112(r) program simplifies the process for both industry and the public. A single state agency gathers information, serves as the point of contact for industry in preparing and submitting risk management plans, and provides a central source of information for the public. However, states have identified potential drawbacks to this approach. Agency staff may lack the expertise to administer all aspects of the program. Moreover, implementation activities may be duplicated in related programs operated by other state agencies.

Georgia has designated its department of natural resources as the agency that will implement Section 112(r). The state's air quality, emergency response, and emergency planning and community right-to-know programs are all housed in this agency, enabling the state to draw on their expertise and resources to administer the Section 112(r) program.

Minnesota will augment the role of the state emergency response commission to carry out activities under the Section 112(r) program. The state expanded the SERC's responsibilities beyond carrying out the requirements of EPCRA to include providing Section 112(r) technical assistance and outreach to local governments and facilities. In addition, the SERC, working with the Minnesota Pollution Control Agency and the Minnesota Department of Agriculture, will perform an initial review of risk management plans and may undertake activities to ensure compliance with the Section 112(r) program.

Multi-Agency Approach

Some states are taking a multi-agency approach to operating the Section 112(r) program, primarily because many facilities in the state are subject to both the requirements of Section 112(r) and federal air permitting regulations under Title V. This approach enables a state's air permitting agency to focus on those facilities subject to the two regulations; a separate agency assumes the responsibility for those facilities subject only to Section 112(r). States taking a multi-agency approach to Section 112(r) implementation will benefit from pooling the expertise and resources of several state agencies and reducing the burden on a single entity. However, industry may receive conflicting information on compliance and enforcement issues if more than one agency is involved in implementation.

The Illinois Environmental Protection Agency (IEPA) and local emergency planning committees under the jurisdiction of the Illinois

Emergency Management Agency will implement and enforce the Chemical Accidental Release Prevention Program for facilities subject to both Section 112(r) and Title V. The state will coordinate Section 112(r) program activities by establishing memoranda of agreement between IEPA and the state's LEPCs that outline each entity's responsibilities. The state chose this approach because 15 percent of the state's facilities that are covered under the Section 112(r) program also are subject to Title V requirements, which are enforced by IEPA's bureau of air permits. Under the Illinois program, the bureau of air permits will administer Section 112(r) for these facilities and the state's emergency management agency will administer Section 112(r) for facilities submitting risk management plans. The state will consider implementing the program for facilities subject only to Section 112(r) if additional federal resources become available.

Funding the Section 112(r) Program

Funding the Section 112(r) program will present the most significant challenge to states. The funding approaches of states with existing risk management programs offer guidance to other states that are beginning to develop a state-administered program. States are examining these state funding approaches as well as the federal funding options for Section 112(r). They also are exploring other state funding options. State and federal sources can be used separately or in combination to help states address the financial challenges of implementing Section 112(r).

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Four States' Experiences in Funding Chemical Accident Prevention Programs

The experiences of Delaware, Louisiana, Nevada, and New Jersey suggest the potential fiscal impact of Section 112(r) on states. These states operated risk management programs before the federal program was established. Their experiences indicate that the annual cost to a state of operating a chemical accident prevention program will vary depending on its strategy for ensuring compliance with the program, as well as the number and types of facilities in the state that must comply with the federal requirements.

For example, the 1995-96 staff and operating costs for operating New Jersey's risk management program were \$810,000 for the state's 104 facilities covered under the program. The state recovered these costs by assessing fees on these facilities based on the quantity of chemicals on site and the number of processes covered under the rule. Most of these funds were dedicated to paying for the staff costs to perform comprehensive onsite facility inspections and audit risk management plans to ensure compliance with the state's requirements.

Although Delaware covers approximately the same number of facilities as New Jersey under its accident prevention program, the state's

program costs are significantly less than those of New Jersey because Delaware performs fewer facility audits. The state's fee system that funds its accident prevention program raises \$140,000 of the \$170,000 needed to administer the program; the remaining costs are covered by the state. Delaware reduced its costs by developing a generic compliance program for the state's propane distributors, the industry sector that comprises 44 percent of the facilities affected by the state's program. This approach has reduced the need for costly, individual audits.

The Nevada Department of Environmental Protection spends \$270,000 annually to administer its risk management program for thirty-six facilities. State officials anticipate that an additional 100 facilities will be subject to both the state program and federal Section 112(r) requirements, increasing the state's costs to \$390,000. Louisiana allocates \$165,000 for its accident prevention program to cover the costs of establishing a database, registering facilities that must comply under state law, and developing the state's accident prevention rule.

The cost to a state of administering Section 112(r) will be affected by the scope of training, technical assistance, inspection, review,

and oversight activities that state agencies undertake. States will be better able to determine program costs after assessing their capabilities, existing state agency expertise, and the potential risks of chemical accidents at facilities covered under the program.

Federal Funding Options

Limited state funds for administering a state chemical accident prevention program give states little choice but to tap federal funding sources to implement the Section 112(r) program. The following two federal funding programs are available to states.

Using Section 105 Air Quality Grants

The federal government has made limited funds available to states for developing and implementing the Section 112(r) program. For example, EPA distributes air quality grants allocated through Section 105 of the Clean Air Act for administering federal air permitting regulations. States can also use these grants to fund Section 112(r) activities for facilities subject to both regulations. However, in most states, these funds are committed to staffing and other expenses needed to operate the state's air permitting program and will not be adequate to support Section 112(r) activities.

Using Technical Assistance Grants

EPA also has established a temporary federal funding source for states implementing Section 112(r) through the agency's Technical Assistance Grant (TAG) program. Announced in January 1997, the EPA Office of Chemical Emergency Preparedness and Prevention's temporary grant program will provide financial assistance to states that are in the initial stages of developing chemical accident prevention programs and integrating these activities into related chemical emergency preparedness programs. Under the TAG program, states can request up to \$150,000 to cover activities related to Section 112(r) implementation, such as developing a comprehensive implementation strategy for the state or providing guidance and training materials to LEPCs. The state must provide matching funds equal

to 25 percent of the grant. It is uncertain whether TAG program funds will be dedicated to assisting states with Section 112(r) implementation in 1998.

State Funding Options

The limited federal resources available to states make it necessary for states to use existing funds or create new funding sources to fund a state-administered Section 112(r) program. States can use three funding sources separately or in combination.

Using Existing State Agency Resources

This funding strategy will place the greatest burden on state agencies involved in Section 112(r) implementation. States are faced with implementing existing chemical emergency planning and response programs on limited budgets. Relying on existing funds will require states to integrate Section 112(r) activities with other related state programs. It will also require them to examine current emergency planning and response priorities to reallocate funding and staff for Section 112(r) implementation.

Establishing a New State Fee System

Most state officials believe that the political climate will make it difficult for their legislatures to pass legislation that imposes new fees or raises existing fees on businesses in the state to cover the costs of implementing Section 112(r). However, some states already have fee systems to fund existing chemical accident prevention programs. Fees are based on the category under which the facility falls, which is tied to the severity of possible risks, or on the number of processes at a facility that are subject to the requirements of the Section 112(r) program.

Delaware legislation passed in 1989 and amended in 1991 established a fee program to fund the state's accident prevention program. The fee is based on units that are calculated by dividing the facility's total inventory of a specific chemical by the threshold quantity established by the state regulation for that chemical. The state charges \$500 each year for the first unit and \$25 for each additional unit

covered under Section 112(r), up to a maximum of \$7,975 per facility. Legislation passed in Louisiana in August 1997 revises the existing fee structure to cover the anticipated operating costs of the state's accident prevention program, totaling approximately \$500,000 in fiscal 1997 and fiscal 1998. Under the state law, facilities that pose the greatest risk are subject to a \$2,500 fee and those that pose less risk are charged a \$200 fee.

Using Revenue from the State's Title V Operating Permit Fee Program

States are looking to tap resources dedicated to related programs that can also be used for Section 112(r) implementation. For example, states have imposed permit fees to cover the costs of implementing federal air permitting regulations under Title V of the Clean Air Act. Georgia is one of several states that will use the revenue currently collected under the state's Title V fee program to administer Section 112(r) for facilities subject to both Section 112(r) and air permitting programs. However, revenues from this fee system may be insufficient to cover the costs of adminis-

tering both programs, and the state may find it difficult to raise the fees to cover Section 112(r)-related expenses.

States may need to use multiple funding sources to operate their Section 112(r) programs. The South Carolina Department of Health and Environmental Control will use federal funding it receives for facilities that must obtain air quality permits under Title V, as well as revenue from state operating permit fees, to administer Section 112(r) for those facilities subject to both Section 112(r) and air quality permit regulations. The state will consider establishing a fee system to cover the costs of administering the program for the remaining facilities, or requesting assistance from EPA to cover these costs.

The fiscal impacts demand that states choosing to implement the program find creative funding approaches that best use the state's expertise and resources. Sharing resources among state agencies and keeping abreast of potential state and federal funding sources can help states address the financial challenges of Section 112(r) implementation.

Communicating Section 112(r) Information to the Public

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Educating the public about the presence of hazardous and toxic chemicals in communities has been a primary goal of federal, state, and local emergency planning activities since the enactment of the Emergency Planning and Community Right-to-Know Act in 1986.

Similarly, the Section 112(r) program encourages public access to and understanding of the chemical information included in risk management plans.

LEPC Activities

Although the Section 112(r) rule does not specifically charge local emergency planning committees with the task of educating citizens about the information included in risk management plans, LEPCs may be an effective forum for communicating RMP information to the public. These committees have a broad-based membership that includes representatives from the public, police and fire departments, civil defense entities, public health agencies, hospitals, and the chemical industry, as well as members of the media and elected officials. This composition encourages public discussion of chemical hazards among a diverse group of community members. LEPC members typically have strong ties to the community and are well positioned to communicate information and respond to public inquiries. In addition, unlike other community organizations, these LEPCs also have firsthand knowledge of their community's emergency response plans and the potential local hazards.

LEPCs are still working to meet the public education requirements of EPCRA and will face major challenges in carrying out additional responsibilities under Section 112(r). They often operate with little or no funding or staff and, in many cases, they lack the train-

ing to interpret information in risk management plans and communicate risk to the public. Recognizing these limitations, some states will help LEPCs with Section 112(r) implementation at the local level. For example, Florida's Section 112(r) implementation model calls for the state to help its eleven local emergency planning committees obtain the computer equipment they need to access and use the risk management plans that will be stored in an EPA database. The state's Section 112(r) workgroup proposed a budget for implementation that sets aside \$25,000 for LEPC support and automation enhancement.

Industry Efforts

Although the federal rule does not require chemical facilities to develop a formal risk communication strategy for Section 112(r), it is advantageous for industry to work with state emergency response commissions, local emergency planning committees, and citizen groups to increase public understanding of the hazards in communities. Ten industries located in Richmond County, Georgia, are using the relationships they have developed with the county's LEPC in implementing EPCRA to lay the groundwork for Section 112(r) implementation at the local level. Industry representatives are participating in a voluntary program that was initiated by the

LEPC. For each facility, they will develop a "worst-case scenario," as required under Section 112(r), and work with the LEPC to develop a model risk communication plan for disseminating information to the public. The state is providing technical assistance to the LEPC to develop the risk communication program. It also is encouraging other facilities subject to Section 112(r) and other LEPCs to undertake this type of program.

Federal Initiatives

EPA is taking steps to make the information contained in risk management plans accessible

to the public. The agency is developing a reporting mechanism that will encourage electronic submission of RMPs and increase LEPC and public access to the information. By December 1997, EPA will also publish guidance for local emergency planning committees on using the information in risk management plans to educate communities on potential chemical risks.

Implementing Section 112(r) in Florida And Michigan

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Several states have begun to design their own strategies for implementing Section 112(r). These strategies take into account the requirements of the program, challenges and opportunities of a state-administered program, and methods for communicating potential chemical risks. Other implementation approaches may emerge as outstanding issues related to the program are resolved.

Seeking Full Delegation for Section 112(r) in Florida

Florida became one of the first states to begin formal discussions on state Section 112(r) implementation when it created a Section 112(r) state workgroup in July 1996. Established by the Florida State Emergency Response Commission, the workgroup is composed of state and local representatives from multiple government agencies, federal government officials, and industry representatives. Its mission was to recommend to the commission the best approach to implementing Section 112(r).

The group developed implementation options based on the authority and resources available to state agencies and the approximate costs of the chemical accident prevention programs in Delaware and Nevada. Based on this information, the workgroup estimated that Florida's risk management program for 2,000 facilities would cost the state a minimum of \$302,000 annually to administer. In October 1996, the workgroup recommended to the SERC that the state seek full delegation authority from EPA to administer Section 112(r), and it began developing a state implementation model.

Florida's proposed state implementation model addresses both the structure and

processes the state will use to administer its risk management program. To make the most efficient use of agency expertise and resources, the state has chosen to designate its department of community affairs (DCA), the state agency responsible for carrying out EPCRA activities, as the lead agency responsible for implementing Section 112(r). However, the state will also involve other relevant state agencies in program implementation. For example, the department of environmental protection will support Section 112(r) implementation by providing DCA with in-kind services, such as technical assistance in developing models for risk management plans, and by helping perform onsite inspections at facilities the department of environmental protection inspects to comply with other regulations. In addition, the state plans to create a technical advisory group composed of state agency staff to work with DCA to administer the state's Section 112(r) program. The workgroup's model also outlines the processes the state will use to receive risk management plans by electronic submission, audit Section 112(r) facilities, and conduct enforcement activities.

Under DCA's proposed timeline for implementation, the state will begin operating its program in 1998, one year before facilities will submit risk management plans to the

department. This lead time will enable the department to perform extensive facility outreach, education, and technical assistance that the state hopes will contribute to a high rate of program compliance. During this period, DCA will also help local emergency planning committees prepare to assume their responsibilities under the program. State officials in Florida believe that this assistance is critical to the success of the program given the limited funds and training support available from EPA to address LEPC needs in the early stages of implementation.

The Florida SERC gave its preliminary approval to the state implementation plan in April 1997. Currently it is seeking input from industries within the state on the implementation plan and a state fee system for Section 112(r). The commission will then review draft legislation that establishes a state risk management program and submit the draft language to EPA for approval. Florida's legislature will consider the bill during its 1998 legislative session.

Implementing Section 112(r) for Title V Facilities in Michigan

Michigan's approach to implementing Section 112(r) requires fewer state resources than does

Florida's approach. The state is integrating the activities it conducts to comply with Title V with those required under the Section 112(r) program.

States that already are administering the federal air permitting program for facilities under Title V of the Clean Air Act can also implement the Section 112(r) program for these facilities, leaving EPA responsible for implementing the program for the remaining facilities. The Section 112(r) program also applies to facilities that are subject to the federal air permitting program. Consequently, Michigan's permitting agency will be responsible for ensuring that these facilities submit a risk management plan.

The air quality division of the Michigan Department of Environmental Quality, which implements the state's Title V program, will also implement Section 112(r) for these facilities. The state cites a lack of funds and agency staff as the primary reason it will not implement the Section 112(r) program for all of the facilities subject to the federal rule.

Conclusions

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Most states have not decided whether they will assume the responsibility for the Chemical Accidental Release Prevention Program under Section 112(r). However, a preliminary analysis of implementation approaches suggests that states will assume the responsibility for some components of the program but leave the responsibility for other requirements with EPA. Program funding is a major consideration for states in making this decision. Another determining factor will be the degree of flexibility that EPA grants to states to enable them to design and implement a program that meets their needs.

The Section 112(r) program presents governments and industry with an important opportunity to prevent serious chemical accidents that have the potential to affect public health and the environment. However, critical issues still need to be resolved before many states determine their final approach to program implementation. These issues include the following.

- **Ensuring state/EPA coordination of the Section 112(r) program.** Successful implementation of the program can be achieved only if states and EPA work cooperatively to ensure that state Section 112(r) programs meet federal and state objectives, clarify the methods for seeking delegated authority for the program, and provide the necessary training and technical assistance to state and local government agency staff.
- **Providing the necessary support to local emergency planning committees.** LEPCs will play a critical role in Section 112(r) implementation. However, they need guidance on interpreting and communicating the information in risk management plans.

Federal and state governments and industry need to provide LEPCs with the training and equipment that will enable these committees to serve as the primary vehicles for providing the public with access to this information.

- **Specifying the requirements for auditing facility plans.** The federal government needs to inform states of the percentage or minimum number of risk management plans that they would be required to audit if they choose to administer a state Section 112(r) program.

States also have expressed concern about being given the necessary flexibility to create a program that meets their needs and considers constraints on resources. If states assume full or partial responsibility for the Section 112(r) program, they will need a great deal of autonomy in determining how it will be structured, funded, and enforced. The federal government will need to be mindful of this need as it works with states during the next year to clarify many of the issues related to implementation of the Section 112(r) program.

Appendix: State Contacts for Further Information on Section 112(r) Implementation

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